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STATE FOR EAP/MLS AND EB/TPP/IPE JBOGER
STATE ALSO PASS USTR DBISBEE AND RBAE
STATE ALSO PASS USPTO FOR JURBAN AND PFWLER
USDOC FOR 4430/MAC/AP/OPB/VLC/HPPHO
AMEMBASSY BANGKOK FOR USPTO JNESS

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [ECON](#) [BEXP](#) [PGOV](#) [VM](#)

SUBJECT: IPR IN VIETNAM - STRONG GVN WILL BUT WEAK ENFORCEMENT

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(U) This cable is sensitive but unclassified, not for Internet.

REF: A) HCMC 681 B) 06 HANOI 2602

11. (SBU) Summary: During a June 19-20 visit, USTR Director for Intellectual Property and Innovation Rachel Bae met with Government of Vietnam (GVN) officials to discuss IPR issues relating to Vietnam's commitments under the U.S.-Vietnam Bilateral Trade Agreement (BTA) and Vietnam's accession to the World Trade Organization (WTO). She pressed the Supreme People's Court to complete its draft circular providing criminal remedies for commercial scale piracy - a more than five-month overdue requirement to meet Vietnam's WTO commitments. In a roundtable with government IPR agencies, officials reported progress on enforcement efforts, while noting that additional training and capacity building is needed for officials to understand fully Vietnam's new laws and obligations. In separate meetings, IP right holders expressed optimism that the IPR environment is improving, and several detailed positively their cooperation with enforcement bodies. Right holders did stress, however, that more IPR training is needed for all elements of the enforcement system, with some identifying training for court officials as a top priority. GVN officials were enthusiastic about continuing to work with the United States to address enforcement concerns and are drafting an IPR action plan that they will share with the United States for input. Enhanced bilateral engagement in the near future could yield significant improvements as Vietnam grapples with the challenges of implementing its many new IPR commitments. End summary.

12. (U) In conjunction with the June 19 Annual BTA Review in Washington, Office of the U.S. Trade Representative (USTR) Director for Intellectual Property and Innovation Rachel Bae met with GVN officials in Hanoi on June 19-20 to review and assess Vietnam's efforts to implement effectively its BTA and WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) obligations. These discussions supplemented the talks in Washington, and were designed to engage directly the relevant GVN agencies responsible for implementing these commitments. In addition to seeking a general assessment of the effectiveness of Vietnam's enforcement regime, Bae focused specifically on urging Vietnam to expedite its efforts to draft regulations providing for the availability of criminal remedies for cases of willful copyright and trademark infringement on a commercial scale, as well as to express U.S. concerns over ongoing piracy of U.S.-owned broadcast content.

13. (U) During a two hour discussion, Bae urged Supreme People's Court (SPC) Deputy Chief Justice Dang Quang Phuong, as the chief drafter, to act quickly to finalize a draft circular providing criminal remedies for commercial scale copyright and trademark infringement consistent with Vietnam's BTA and TRIPS obligations. Vietnam's criminal code currently lacks the legal provisions to cover the scope of copyright and trademark infringement included in Article 61 of the TRIPS Agreement, and both sides acknowledge that Vietnam must ultimately revise its criminal code. In the short term, however, Bae pointed to commitments Vietnam's negotiators made during the WTO accession process which bound Vietnam to issue an Inter-Ministerial Circular instituting the necessary provisions in order to be TRIPS consistent upon WTO accession. Despite extensive dialogue between USTR and the SPC, including multiple exchanges of specific draft language to include in the circular over the past year, it is now more than five months outstanding, Bae continued.

14. (U) Expressing hope that the two sides can quickly resolve the outstanding issues, Bae raised several critical changes that Vietnam must make in the current draft circular's language to be TRIPS consistent. First, the definition of piracy must be expanded to cover, at a minimum, preparing derivative works, broadcast of protected works and the use of public performances without authorization. On the second key issue of defining commercial scale, Bae provided Deputy Chief Justice (DCJ) Phuong examples of how the United States and other countries in the region define this term. Specifically, the definition of commercial scale used in the circular must in some way address the right holders' perspective and not be limited to the violators' perspective as it is in the current version. Finally, Bae noted that the current draft does not clearly provide for the seizure and destruction of infringing elements.

15. (U) DCJ Phuong thanked Bae for the examples of how other countries have met this important TRIPS requirement, and echoed her

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interest in quickly making the necessary adjustments to make the circular BTA and TRIPS consistent. Phuong highlighted the difficulties he has had in drafting this circular given the constraints of the current criminal code, but his comments clearly indicated he understood USTR's concerns and requirement that the GVN meet its obligations as soon as possible. Moving to Bae's specific points, the Deputy Chief Justice noted that seizure and destruction of infringing elements is covered through a provision in the IP Law referring to articles in the civil and administrative codes covering this issue. On the definition of commercial scale, he agreed to study the language other countries have used, and mentioned that Vietnam is considering revising the language from "for profit-making purpose" to for "economic gains." On the issue of expanding the definition for piracy, Phuong maintained that it would be difficult to expand the definition of Article 131 of the Criminal Code for Copyright Infringement, but thought he might be able to resolve the issue through another part of the Code. Ultimately, Phuong committed to rework the current draft (without specifying a timeframe) and sharing the new version with USTR for comment. In conclusion, Bae thanked him, and encouraged him to fulfill this commitment as soon as possible.

16. (SBU) In a later meeting with officials from the Ministry of Trade's Multilateral Trade Policy Department, negotiators involved with Vietnam's WTO accession explained that per Deputy USTR's June 4 letter, the Ministry of Trade attempted to participate in Bae's meeting with DCJ Phuong, but their request was waved off. Deputy Director General Luong Hoang Thai did report, however, that MOT requested the Prime Minister's office send a letter to the Supreme People's Court urging them to complete the criminal circular as soon as possible. Additionally, Thai agreed that his office would follow up with the SPC again to request that they expedite the drafting process in accordance with the agreed terms.

17. (U) In a session chaired by National Office of Intellectual Property (NOIP) Director General Tran Viet Hung, more than thirty representatives from seven ministries, including five of the six key enforcement bodies (the Economic Police were not present), updated Bae on Vietnam's progress in implementing its new IP legal framework, recently expanded through a spate of new guiding regulations for the 2005 IP Law. DG Hung, in his opening review of recent and upcoming activities, noted that Vietnam is still in the process of developing an independent assessment body to rule on alleged cases of IP infringement. He also listed a number of regulations that Vietnam is currently drafting to complete its BTA and TRIPS requirements, including a new circular by the Ministry of Justice on administrative penalties and the SPC criminal circular on trademark and copyright infringement. The GVN agencies assessed that, notwithstanding a few outstanding regulations, Vietnam has largely met its BTA and WTO commitments. In a discussion on the criminal, civil and administrative systems, the GVN representatives acknowledged that more work was required on the criminal legal framework, including redrafting the criminal code. While right holders still predominantly rely on administrative measures to seek redress for IP violations, Vietnam issued new guiding documents on civil remedies designed to make that a more user-friendly system.

18. (U) Bae registered her appreciation for the GVN's hard work and cooperation on IP issues, including the extensive data provided as part of the Special 301 process. She continued by saying that the draft criminal circular must be finished soon, as it is important that the criminal, civil and administrative systems all be strong independently. On the administrative system, Bae flagged as an issue a new requirement that right holders must issue a cease and desist letter to infringers before enforcement agencies will take action (see Reftel A). Based on feedback from right holders, this system is not working and serves to "tip off" violators, Bae continued. She also noted that the existence of six enforcement agencies is both a strength and a weakness in the Vietnamese system, as it can be confusing for right holders to determine which agency is responsible for a specific issue. Director General Hung responded to this point by stating that the Ministry of Trade's (MOT) Market Management Board now chairs an inter-agency "Committee 127" to coordinate enforcement efforts among the various agencies.

19. (U) In response to Bae's query, DG Hung noted that Vietnam does not yet plan to join the WIPO Internet Treaties. He continued by noting that Vietnam may consider this in future, but they are now focused on increasing knowledge and awareness of IP in the Internet environment. Hung also pointed out that U.S. right holders are

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protected under Vietnam's IP Law (as, under the WTO, they are accorded national treatment).

110. (SBU) MOT's Market Management Board Deputy Director Nguyen Manh Hung noted the acute training needs for his agency, which has more than 5000 employees nationwide. He noted his interest in further cooperation with the United States on IP enforcement technical assistance. In response to these requests, Bae noted U.S. interest in working with Vietnam to develop and implement an action plan for the two sides to further cooperate with an aim of ultimately removing Vietnam from the Special 301 Watch list. NOIP agreed to take the lead on behalf of the GVN and will draft a list of items they would like to include in such an action plan.

SIGNAL PIRACY - SIGNIFICANT PROGRESS

111. (SBU) As part of the IPR roundtable, Bae raised continuing U.S. concerns that the GVN has not taken sufficient enforcement actions to stop the serious problem of signal piracy by the State-owned digital terrestrial broadcaster, the Vietnam Television Technology Investment and Development Company (VTC). Despite frequent requests over the past several years by U.S. industry and Post, VTC has continued its egregious use of U.S.-owned broadcast content without a license (see reftel B for additional background on VTC and signal piracy in Vietnam). Following increased pressure in recent months, VTC removed HBO and CNN from its channel lineup in early June.

Following the roundtable, a Ministry of Posts and Telematics official reported that the remaining (four) U.S. channels were also removed. Recent audits confirm that three of the four remaining channels have indeed been removed, but VTC continues to pirate MTV Asia. USTR and Post will continue to work with U.S. industry to ensure a complete cessation of pirating activities.

RIGHT HOLDERS OPTIMISTIC BUT ENFORCEMENT REMAINS WEAK

¶12. (SBU) In a series of separate meetings, U.S. and Vietnamese right holders and right holders' representatives described with some optimism their experiences with IP enforcement in Vietnam. Unilever Vietnam's Vice President of Corporate Relations Mr. Tran Vu Hoai noted his firm's positive cooperation with enforcement agencies, with the caveat that Unilever has adopted a very proactive approach to reduce counterfeit goods in the market, including educating local police and enforcement officials. He speculated, however, that small companies without the resources to dedicate to such efforts may have a different experience. The Vietnam Intellectual Property Association (VIPA), a collection of firms and individuals interested in promoting IP enforcement in Vietnam, opined that judges and court officials, in particular, need additional training on IP regulations, characterizing them as "ineffective due to a shortage of expertise." Ideally, VIPA would like for Vietnam to create an IP-focused court.

¶13. (U) Several law firms representing right holders here raised concerns over the administrative requirement for a cease and desist letter. One lawyer noted that the Decree only requires the letter for trademark infringement cases (and not for trademark counterfeiting), but GVN authorities have misinterpreted this and are demanding a letter for all cases of accused infringement. While one firm was optimistic that recent changes to the civil system would lead to an increased use of civil remedies, another noted that right holders continue to be hesitant to use this system due to the potentially costly proceedings and the uncertain outcome from inexperienced courts. Each of the law firms agreed that enforcement here is improving, but much more training is needed to address the dearth of expertise and experience among IP enforcement agents.

COMMENT

¶14. (SBU) All of the government agencies present were clearly engaged and dedicated to improving IP enforcement in Vietnam. One consistent message from all of them was the need for more training to improve their officials' capacity and understanding of the new laws. GVN officials also consistently expressed a commitment and desire to improve IPR enforcement here. They openly recognized that a lack of experience and expertise among their personnel constitutes a major hindrance to creating a better environment for foreign and domestic right holders. With that in mind, there is strong interest on the part of the GVN to enhance and expand bilateral cooperation and technical assistance. This is a critical time as Vietnam finalizes its legal regime and increasingly focuses on

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implementation. Enhanced engagement by the United States, through the action plan that NOIP has agreed to draft and under the Trade and Investment Framework Agreement (TIFA), stands to yield significant improvements.

¶15. (U) USTR Director for Intellectual Property and Innovation Rachel Bae cleared this cable.

MARINE